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10/596,505	03/23/2007	Peter G. Selen	59076US009	7399
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EXAMINER				
HUANG, CHENG YUAN				
ART UNIT		PAPER NUMBER		
1787				
NOTIFICATION DATE		DELIVERY MODE		
09/03/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

LegalUSDocketing@mmm.com

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Office Action Summary

Application No.

10/596,505

Applicant(s)

SELEN ET AL.

Examiner

CHENG HUANG

Art Unit

1787

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 July 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 10-14, 19-22, and 24-30 is/are pending in the application.
- 4a) Of the above claim(s) 1-8, 21, 22, and 24-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-17, 19, 20, 29, and 30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 10-17, 19-20, and 29-30 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

3. Claim 10 recites the limitations “attached” and “uncovered” that appear to have no support in the originally filed specification. It is not clear what, if any, difference there is between attached and connected, which was previously stated in the claim and it is not clear what, if any, difference there is between exposed and uncovered.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 10-17 and 29-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claim 10 recites the phrases “attached” and “uncovered”. It is not clear what, if any, difference there is between attached and connected, which was previously stated in the claim and it is not clear what, if any, difference there is between exposed and uncovered.
7. Claim 10 also recites “an anti-adhesive means is provided to contact...first major surface” which is unclear whether the anti-adhesive means in the final product is contacting the first major surface or may contact the first major surface.
8. Regarding claims 29 and 30, the scope of the claims is confusing given that each state that it is a “method” of claim 10 which is a claim drawn towards an article. For the purpose of examination, claims 29 and 30 are considered to be drawn towards the closure tape tab of claim 10.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 10-14, 16, and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Tritsch (U.S. Patent No. 3,930,503).
11. Regarding claim 10, Tritsch teaches a closure tape tab for an absorbent article (See Abstract), comprising a proximal end portion (terminal end 15, pressure sensitive adhesive layer 15, col. 2, line 66, Fig. 3, col. 2, line 42) and a distal end portion (terminal end 16, col. 2, line 43, Fig. 3) being connected by an inner tab portion (central segment 17, col. 2, lines 43-45), said

inner tab portion having a first major surface (lower surface, Fig. 3) and an opposite second major surface (upper surface, Fig. 3), wherein said proximal end portion is attached to the second major surface of said inner tab portion such that said proximal end portion extends over at least a substantial portion of the second major surface of said inner tab portion (pressure sensitive adhesive layer 15, Fig. 3), and said distal end portion overlaps with the first major surface of said inner tab portion (Fig. 3) such that at least an exposed portion of the first major surface of the inner tab portion remains uncovered by said distal end portion (Fig. 3), wherein said distal end portion and the first major surface of said inner tab portion are attached where they overlap given that said distal end portion and the first major surface of said inner tab portion are attached through the layers of release surface 25 and terminal portion 16 and (Fig. 3) and given that the distal end portion and inner tab portion are connected, and wherein an anti-adhesive means is provided to contact at least at a part of said exposed portion of the first major surface of the inner tab portion (release surface 25, col. 2, line 63, Fig. 3).

12. Regarding the claimed limitations "for an absorbent article" applicants attention is drawn to MPEP 2111.02 which states that "if the body of a claim fully and intrinsically sets forth all the limitations of the claimed invention, and the preamble merely states, for example, the purpose or intended use of the invention, rather than any distinct definition of any of the claimed invention's limitations, then the preamble is not considered a limitation and is of no significance to claim construction". Further, MPEP 2111.02 states that statements in the preamble reciting the purpose or intended use of the claimed invention must be evaluated to determine whether the purpose or intended use results in a structural difference between the claimed invention and the

prior art. Only if such structural difference exists, does the recitation serve to limit the claim. If the prior art structure is capable of performing the intended use, then it meets the claim.

13. It is the examiner's position that the preamble does not state any distinct definition of any of the claimed invention's limitations and further that the purpose or intended use, i.e. for an absorbent article, for fastening of the article on the body of a person, recited in the present claims does not result in a structural difference between the presently claimed invention and the prior art closure tape tab and further that the prior art structure which is a closure tape tab identical to that set forth in the present claims is capable of performing the recited purpose or intended use.

Furthermore, the claimed limitations are taught by the prior art as disclosed above.

14. Regarding claim 11, Tritsch teaches wherein said anti-adhesive means extends over the entire length of exposed portion of said first major surface of said inner tab portion (Fig. 3).

15. Regarding claims 12 and 13, Tritsch teaches wherein said anti-adhesive means is an anti-adhesive paper, an anti-adhesive film, a cover strip or a liner, or an anti-adhesive coating (col. 4, lines 30-34) where an anti-adhesive film is considered to be an anti-adhesive coating, and a cover strip or liner is considered to be the release paper taught by Tritsch.

16. Regarding claim 14, Tritsch teaches wherein said inner tab portion comprises an elastic (col. 3, lines 18-22).

17. Regarding claim 16, Tritsch teaches wherein an adhesive is provided on the distal end portion (pressure-sensitive adhesive 26, col. 2, line 66, Fig. 3) given that the adhesive is on the distal end portion as depicted in Fig. 3.

18. Regarding claim 29, Tritsch teaches wherein said distal end portion and said proximal end portions are attached to the first and second major surfaces, respectively, of said inner tab portion through adhesive bonding (pressure-sensitive adhesive 26, col. 2, line 66, Fig. 3)..

Claim Rejections - 35 USC § 103

19. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

20. Claims 10, 15, 17, and 29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tritsch (U.S. Patent No. 3,930,503) in view of Richman et al. (U.S. Patent No. 4,020,842).

21. Regarding claim 10, Tritsch teaches a closure tape tab for an absorbent article (See Abstract), comprising a proximal end portion (terminal end 16, backing sheet 21, and facing sheet 23, col. 2, lines 43, 59-60, Fig. 3) and a distal end portion (terminal end 15, col. 2, line 42) being connected by an inner tab portion (central segment 17, col. 2, lines 43-45), said inner tab portion having a first major surface (lower surface, Fig. 3) and an opposite second major surface (upper surface, Fig. 3), wherein said proximal end portion is attached to said inner tab portion at said second major surface thereof such that said proximal end portion extends over at least a substantial portion of the second major surface of said inner tab portion (pressure sensitive adhesive layer 15, Fig. 3), and said distal end portion overlaps with the first major surface of said

inner tab portion such that at least an exposed portion of the first major surface of the inner tab portion remains uncovered by said distal end portion (Fig. 3) wherein said distal end portion and the first major surface of said inner tab portion are attached where they overlap given that said distal end portion and the first major surface of said inner tab portion are attached through the layers of release surface 25 and terminal portion 16 and (Fig. 3) and given that the distal end portion and inner tab portion are connected and wherein an anti-adhesive means is provided to contact at least at a part of said exposed portion of the first major surface of the inner tab portion (release surface 25, col. 2, line 63).

22. Regarding claim 15, Tritsch teaches wherein said proximal end portion is comprised of a nonwoven material (col. 3, lines 65-66).

23. Tritsch fails to teach the distal end portion being comprised of a nonwoven material.

24. However, Richman et al. teaches a closure tape tab (reclosable tab stock, See Abstract) wherein said proximal and distal end portions are comprised of a nonwoven material (left and right sides of Fig. 3, diaper portions 27 and 28, col. 3, lines 56 and 67).

25. It would have been obvious to one of ordinary skill in the art at the time of the invention to use a nonwoven material for both the proximal and distal end portions of Tritsch for softness.

26. Regarding claim 17, Tritsch teaches a closure tape tab for an absorbent article (See Abstract), comprising a proximal end portion (terminal end 15, col. 2, line 42, Fig. 3) and a distal end portion (terminal end 16, col. 2, line 43, Fig. 3) being connected by an inner tab portion (central segment 17, col. 2, lines 43-45), said inner tab portion having a first major surface (lower surface, Fig. 3) and an opposite second major surface (upper surface, Fig. 3), wherein said proximal end portion is attached to the second major surface of said inner tab portion such that

said proximal end portion extends over at least a substantial portion of said second major surface of said inner tab portion (Fig. 3), and said distal end portion overlays and is face-to-face relation to the first major surface of said inner tab portion given that said distal end portion lies over the first major surface of said inner tab portion and said distal end portion is connected to the first major surface of said inner tab portion (Fig. 3) and given that the distal end portion and inner tab portion are connected, wherein said distal end portion extends over said entire first major surface of said inner tab portion (terminal portion 16 extends over the entire first major surface central segment 17, Fig. 3).

27. Tritsch fails to teach a line of weakness.
28. However, Richman et al. teaches wherein a line of weakness is provided between the distal end and the proximal end of the closure tape tab (slit 18, col. 3, line 8, Figs. 1 and 3).
29. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a line of weakness between the distal end and the proximal end portions of the closure tape tab of Tritsch to control the limitation of peel-back (Richman et al., col. 4, lines 10-19).
30. The resulting structure of Tritsch as modified by Richman et al. produces a closure tape tab wherein that a portion of the distal end portion is removable from the closure tape tab so as to expose the first major surface of said inner tab portion (Tritsch, release surface 25, Fig. 3).
31. Regarding claim 29, Tritsch teaches wherein said distal end portion and said proximal end portions are attached to the first and second major surfaces, respectively, of said inner tab portion through adhesive bonding (pressure-sensitive adhesive 26, col. 2, line 66, Fig. 3)..
32. Regarding claim 30, Tritsch teaches wherein said distal end portion and said inner tab portion are adhesively bonded (pressure-sensitive adhesive 26, col. 2, line 66, Fig. 3).

33. Claims 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tritsch (U.S. Patent No. 3,930,503) and/or in view of Richman et al. (U.S. Patent No. 4,020,842) in view of Loescher (WO 2004/075803).

34. Tritsch and Tritsch as modified by Richman et al. is relied upon as disclosed above.

35. Regarding claim 19, Tritsch and Tritsch as modified by Richman et al. fails to teach a stable roll of laminated closure tape.

36. However, Loescher teaches a stable roll of laminated closure tape (page 6, lines 18-19, Abstract).

37. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide closure tape tab of Tritsch in the form of a stable roll for continuous unwinding of the roll at high speeds.

38. The recitation "laminated" is a process limitation. It is noted that "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process", *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). Further, "although produced by a different process, the burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product", *In re Marosi*, 710 F.2d 798, 802, 218 USPQ 289, 292 (Fed. Cir.1983). See MPEP 2113. Furthermore, the limitation is taught by Loescher (See Abstract).

39. The recitation "...can be cut" is a statement of intended use and does not impart structural limitations upon the claimed invention. The recitation does not limit the scope of the claim since the resulting structure of the claimed invention encompasses that of the device taught by Lipper, as shown above. MPEP 2111.02.

40. Regarding claim 20, Tritsch and Tritsch as modified by Richman et al. fails to teach wherein stable roll of prelaminated closure tape is levelwound.

41. However, Loescher teaches wherein the stable roll of prelaminated closure tape is levelwound (page 6, lines 19-20, Abstract).

42. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a stable roll that is levelwound to increase storage capacity.

43. The recitation "prelaminated" is a process limitation. It is noted that "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process", *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). Further, "although produced by a different process, the burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product", *In re Marosi*, 710 F.2d 798, 802, 218 USPQ 289, 292 (Fed. Cir.1983). See MPEP 2113.

Response to Arguments

44. Applicant's arguments filed 15 July 2010 have been fully considered but they are not persuasive.
45. Applicant amended independent claims 10 and 17 and added new claims 29 and 30.
46. Applicant argues that Tritsch does not teach the amended claim limitations of claim 10.
47. However, as disclosed in the rejection above, Tritsch does teach the amended claim limitations of claim 10. Further, claim 10 does not require "direct" contact of the anti-adhesive means to the exposed portion of the first major surface of the inner tab.
48. Applicant argues that regarding claim 15, it is unclear how the proximal end can be both the pressure sensitive adhesive layer 15 of Tritsch and a nonwoven material at the same time.
49. However, given that the claim recites "comprised of", the proximal end of Tritsch may include pressure sensitive adhesive layer 15 and a nonwoven material at the same time.
50. Applicant argues that regarding claim 17 providing the line of weakness as disclosed by Richman would appear to result in the integral tab 13 of Tritsch to fall apart and destroy the function of the tab of Tritsch
51. However, there is no evidence to support this position given that the line of weakness of Richman appears to be used to temporarily part the tab and not destroy it.
52. Regarding Applicants' statement regarding rejoinder of claims 24-28, given that there is no allowable subject matter present at this time, rejoinder cannot be considered.

Conclusion

53. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

54. Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHENG YUAN HUANG whose telephone number is (571) 270-7387. The examiner can normally be reached on Monday-Thursday from 8 AM to 4 PM.

55. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho, can be reached at 571-272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

56. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

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applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/C. H./

Cheng Yuan Huang

Examiner, Art Unit 1787

August 27, 2010

/Callie E. Shosho/

Supervisory Patent Examiner, Art Unit 1787